

REMARKS

As for the status of the application, Claims 1-14 are pending in this application. Reconsideration of this application is respectfully requested. It is respectfully submitted that this response does not require further searching on the part of the Examiner. It is also respectfully submitted that this response places this application in condition for allowance, or in any event, places it in better condition for consideration on appeal.

Claims 1, 2, 7, 8, 11, 12 and 14 were rejected under 35 U.S.C. § 102(e) as being anticipated by US Patent No. 3,826,254 issued to Mellor.

The Examiner's position is that "Mellor teaches a tubing cuff for securing a tube with a layer of porous material a layer of layer of foam rubber secured to one side of the layer of porous; a reclosable fastener for securing distal needs of the cuff and a bendable adhesive layer having an adhesive attaché do the porous material." Notwithstanding the Examiner's position, it is respectfully submitted that the Examiner's rejection is in error.

The Mellor patent discloses in the Summary of the Invention section that "the appliance comprises a lengthwise elongated pad having first and second elongated sections, the second section defining a flap extending lengthwise beyond the first section to be folded back over one side of the first section and over the needle, catheter or butterfly device oriented to extend crosswise of the pad; first pressure sensitive adhesive means on the opposite side of the first section to adhere the first section to a patient's body; and second pressure sensitive adhesive means on the pad to adhere the flap to the pad first section and to be adherent to the retained device oriented as defined. Also, peel-off backer strip means may typically be applied to the first and second pressure sensitive adhesive means, as will appear. As a result, rapid and firm retention of the needle or catheter to the patient's body is enabled by means of a single appliance or pad, with the danger of undesirable needle or catheter inadvertent rotation or disattachment substantially eliminated."

Thus, it is clear that the Mellor pad is constructed as a single piece of material that is folded back upon itself to hold a needle, catheter or butterfly device. The Mellor patent discloses in column 2, lines 19-20 that the "pad may consist, for example, of a layer of porous plastic foam, as for example polyurethane". A "first pressure sensitive adhesive means" is used to adhere the pad to a patient's body. A "second pressure sensitive means" is used to adhere the folded flap (second section) to the first section.

Claim 1 recites:

1. A tubing cuff for securing a tube to a limb of a patient, comprising:
a layer of porous, cloth-like material;
a layer of porous foam rubber secured to one side of the layer of porous, cloth-like material;

a reclosable fastener for securing distal ends of the cuff together; and
a bendable adhesive layer having an adhesive surface attached to the porous, cloth-like material on a side opposite to the layer of porous foam rubber.

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With regard to Claims 1, it is respectfully submitted that there is no disclosure or suggestion in the Mellor patent regarding the use of two independent layers of different material to form the appliance. The Mellor patent clearly discloses that the appliance is made of a single layer of material ("a layer of porous plastic foam") that is folded back upon itself to secure a needle, etc. The present invention is made of two layers comprises a layer of porous foam rubber secured to one side of a layer of porous, cloth-like material. [Emphasis added]

It is respectfully submitted that there is no disclosure or suggestion in the Mellor patent regarding the use of "cloth-like material" in the appliance. The term "cloth" is not used in the Mellor patent.

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There is no disclosure or suggestion in the Mellor patent regarding the use of "porous foam rubber" in the appliance. While the Mellor patent states that the "pad may consist, for example, of a layer of porous plastic foam, as for example polyurethane", it is respectfully submitted that this is not a disclosure or suggestion of the use of "porous foam rubber". Polyurethane is not a porous foam rubber material. Furthermore, the term "rubber" is not used in the Mellor patent.

not claimed
Furthermore, the Mellor article is secured to a patient's body using adhesive. This is clearly not the case with the present invention, which secures and stabilizes I.V. tubing to a patient's limb without the use of adhesive material, as is stated in the Summary of the Invention section, for example, of the present application.

In view of the above discussion, and with specific regard to Claim 1, it is respectfully submitted that the Mellor patent does not disclose or suggest a tubing cuff comprising "a layer of porous, cloth-like material" and "a layer of porous foam rubber secured to one side of the layer of porous, cloth-like material", as is recited in Claim 1.

Therefore, it is respectfully submitted that the invention recited in Claim 1 is not disclosed or suggested by the Mellor patent, and is therefore not anticipated by, nor is it obvious in view of, the Mellor patent. Withdrawal of the Examiner's rejection of Claim 1 is respectfully requested.

With regard to Claim 2, it is respectfully submitted that the Mellor patent does not disclose or suggest the use of a microporous film layer as the primary strap layer. The terms "microporous" or "microporous film" are not used in the Mellor patent. Therefore, it is respectfully submitted that the Mellor patent does not disclose or suggest that "the layer of porous, cloth-like material comprises microporous film", as is recited in Claim 2.

With regard to Claim 7, it is respectfully submitted that the Mellor patent does not disclose or suggest that "the layer of porous foam rubber comprises non-skid porous foam rubber", as is recited in Claim 7. These terms are not used in the Mellor patent.

With regard to Claims 8, 11 and 12, it is respectfully submitted that the Mellor patent does not disclose or suggest the use of a reclosable fastener that comprises "hook and loop materials". There are no hook and loop materials discussed in the Mellor patent. The terms "hook" and "loop" are not used in the Mellor patent.

With regard to Claim 14, it is respectfully submitted that the Mellor patent does not disclose or suggest that a "layer of porous foam rubber is placed against the patient's limb and secured by the reclosable fastener." The Mellor patent clearly discloses that an adhesive layer is used to secure the elongated pad to the patient's body. The present invention expressly teaches away from the use of adhesive material to secure the tubing cuff to the body.

Dependent Claims 2, 7, 8, 11, 12 and 14 are also considered patentable based upon their dependence from allowable Claim 5. Therefore, it is respectfully submitted that the inventions recited in Claims 2, 7, 8, 11, 12 and 14 are not disclosed or suggested by the Mellor patent, and that the inventions in Claims 2, 7, 8, 11, 12 and 14 are not anticipated by, nor they obvious in view of the Mellor patent. Therefore, withdrawal of the Examiner's rejection of Claims 2, 7, 8, 11, 12 and 14 is respectfully requested.

Claims 4 and 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent No. 3,826,254 issued to Mellor in view of US Patent No. 5,342,317 issued to Claywell. The Examiner admitted that the Mellor patent does not disclose a hypoallergenic porous layer. The Claywell patent is cited as teaching a tubing cuff with a hypoallergenic layer, which the Examiner concluded could have been used in the Mellor appliance.

It is respectfully submitted that the Mellor and Claywell patents, taken singly or together, do not disclose or suggest the invention recited in Claim 1, for the reasons argued above. Therefore, it is respectfully submitted that the Mellor and Claywell patents, taken singly or together, do not disclose or suggest the inventions recited in Claims 4 and 6.

Furthermore, dependent Claims 4 and 6 are considered patentable based upon their dependence from allowable Claim 1. Therefore, it is respectfully submitted that the inventions recited in Claims 4 and 6 are not obvious in view of the Mellor or Claywell patents, taken singly or together. Withdrawal of the Examiner's rejection of Claims 4 and 6 is respectfully requested.

Claims 5, 9 and 10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent No. 3,826,254 issued to Mellor in view of US Patent No. 5,879,335 to Martinez et al. The Examiner admitted that the Mellor patent does not teach the use of a woven loop with a durable backing layer. The Martinez patent is cited as teaching a woven loop with a durable backing layer, which the Examiner concluded could have been used in the Mellor device.

It is respectfully submitted that the Mellor and Martinez et al. patents, taken singly or together, do not disclose or suggest the invention recited in Claim 1, for the reasons argued above. Therefore, it is respectfully submitted that the Mellor and Martinez et al. patents, taken singly or together, do not disclose or suggest the inventions recited in Claims 5, 9 and 10.

With regard to Claim 5, it is respectfully submitted that the Mellor and Martinez et al. patents, taken singly or together, do not disclose or suggest a tubing cuff that comprises a laminate of microporous film and a polypropylene nonwoven material. These terms are not used in the cited patents.

With regard to Claims 9 and 10, it is respectfully submitted that there is no specific teaching contained in the Mellor and Martinez et al. patents that would suggest their combination to add hook and loop materials to the Mellor appliance. This has been accomplished by the Examiner using inappropriate hindsight reconstruction, using the teachings of the cited references in light of Applicant's teachings.

In addition, dependent Claims 5, 9 and 10 are considered patentable based upon their dependence from allowable Claim 1. Therefore, it is respectfully submitted that Claims 9 and 10 are not obvious in view of the Mellor and Martinez et al. patents, taken singly or together. Withdrawal of the Examiner's rejection of Claims 5, 9 and 10 is respectfully requested.

It is noted that Claim 3 was not specifically rejected by the Examiner. In the prior Office Action, the Examiner cited the Bird et al. document in combination with US Patent No. 5,529,062 issued to Byrd as disclosing the invention recited in Claim 3. It is respectfully submitted that the combined teachings of the Mellor and Byrd patents, taken singly or together, do not disclose or suggest the invention recited in Claim 3, and certainly not without the use of hindsight reconstruction.

Dependent Claim 3 is also considered patentable based upon its dependence from allowable Claim 1. Therefore, it is respectfully submitted that Claim 3 is not obvious in view of the Mellor and Byrd patents, taken singly or together. Accordingly, withdrawal of the Examiner's rejection of Claim 3 is respectfully requested.

It is respectfully submitted that issuance of the final Office Action is premature, in that Applicant did not necessitate the new grounds of rejection. Clearly, the Mellor patent does not disclose or suggest the use of a two layer tubing cuff, it is a single layer. The amendments made by Applicant in the previous response did not change the nature or extent of the search required by the Examiner. It appears that the Examiner missed the newly cited Mellor patent during the initial search. It is respectfully submitted that Applicant should not be penalized for this. Consequently, it is respectfully submitted that Applicant did not necessitate the new grounds of rejection.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure to the extent indicated by the Examiner.

In view of the above, it is respectfully submitted that all pending Claims are not anticipated by, nor are they obvious in view of the cited references, taken singly or together, and are therefore patentable. Accordingly, it is respectfully submitted that the present application is in condition for allowance. Reconsideration and allowance of this application are earnestly solicited. It is again respectfully submitted that this response does not require further searching by the Examiner, and places this application in condition for allowance, or in any event, places it in better condition for consideration on appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kenneth W. Float', with a stylized circular flourish at the end.

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